

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JUNE CHO,

Plaintiff,

v.

DUKE UNIVERSITY and MARILYN
HOCKENBERRY

Defendants.

Case No. 1:18-cv-00288-WO-JLW

DECLARATION OF PHYLLIS KENNEL

1. My name is Phyllis Kennel. I am over the age of 18 and am competent to make this Declaration which is based on my own personal knowledge and I give this Declaration as part of the lawsuit brought by June Cho ("Dr. Cho").
2. I am currently Manager Clinical Trials Operations at Duke Clinical Research Institute. From May 2012 to February 2017, I was the Director of Research Operations and Research Practice Manager ("RPM") for the Duke University School of Nursing Clinical Research Unit ("CRU").
3. In my role as RPM, I reported to Diane Holditch Davis until on or about September 1, 2015, when Marilyn Hockenberry took over as the Associate Dean for Research and Clinical Research Unit Director.
4. In my role as RPM, I provided assistance and supervisory oversight to Dr. Cho's research staff. Under the CRU model, research staff report directly to the RPM.
5. Even before Dr. Cho officially started at Duke on July 1, 2015, multiple individuals, myself included, were trying to support her in the transfer of her grant from University of Alabama at Birmingham ("UAB") to Duke. This was challenging as Dr. Cho had difficulty finalizing her budget, locating a laboratory to utilize, and identifying co-investigators.
6. Research staff are paid utilizing "soft money," meaning their positions are funded by grant money. This means that a 50% staff member for a particular study would be expected to work twenty (20) hours per week on the study and would receive

half of his/her salary from the grant funding for that study. Dr. Cho hired Becky Jones as a Study Coordinator at 50% effort. Ms. Jones did a very good job and managed to recruit a significant number of subjects for the study. Because of the CRU reporting structure, Ms. Jones reported directly to me. Ms. Jones informed me that she was working far more than 20 hours per week to keep up with Dr. Cho's demands. Dr. Hockenberry and I addressed the issue with Dr. Cho. Dr. Cho was willing to accept the extra effort by Ms. Jones, but was reticent to pay for it. Dr. Cho eventually agreed to increase Ms. Jones' effort level for a period of time.


7. Ms. Jones also informed me that Dr. Cho made inappropriate comments, including inquiries into details of Ms. Jones' husband's illness and discouraged Ms. Jones from attending medical school at ECU as planned because Dr. Cho did not view it as prestigious. I escalated these concerns to both Dr. Hockenberry and Dr. Barbara Turner.
8. I also sat in on a very uncomfortable interview with Dr. Cho for another staff position wherein Dr. Cho immediately told the individual (who came highly recommended) that she was not acceptable because she did not have a masters' degree, which was not a requirement for the position, even though it was an entry level position and a bachelors was all that was required. .
9. Dr. Cho also became upset when her data technician who was scheduled for surgery unexpectedly was admitted to the hospital in advance of her surgery date. This happened to coincide with another staff member being on vacation and Dr. Cho was very upset about the gap in coverage for a one-week period. Dr. Cho said she did not have time to do things like get postage or other administrative matters. She believed it was my job to fill in. That is not my role. I again escalated my concerns. A true and correct copy of correspondence related to this issue is attached as **Attachment A**.
10. Dr. Cho had a difficult time finding a laboratory that was willing to work with her and several declined the opportunity. By the end of May 2016, Dr. Cho decided she would like to send her samples to UNC Chapel Hill, which was the fourth lab she went to for help.
11. Around this same time, Ms. Jones submitted her resignation to attend medical school beginning in mid-July 2016. Dr. Kimberley Fisher assumed an active role in the study.
12. In November 2016, Dr. Fisher learned that Dr. Cho re-opened enrollment at UAB, which was not approved by Duke's IRB.
13. Around this same time, Dr. Cho's data technician asked me about the propriety of utilizing videos from a different study at UAB for training purposes. This raised

concerns about a potential HIPAA concerns and issues related to whether the proper agreements were in place. I escalated these concerns to Duke's Office of Audit, Risk and Compliance which was planning to conduct an audit of Dr. Cho's study.

14. In June 2017, Dean Broome, Dr. Turner, Dr. Fisher, Dr. Hockenberry and I attended the Faculty Hearing Committee hearing of Dr. Cho's grievance. The Committee issued its unanimous decision in July 2017 that Dr. Cho was not the subject of impermissible harassment or academic due process violations.
15. On or about August 2017, I was made aware that Dr. Cho filed a charge with the Equal Employment Opportunity Commission alleging national origin discrimination and retaliation. To my knowledge, this was the first time Dr. Cho alleged national origin discrimination. At no time prior had Dr. Cho raised or expressed any concern to me that she felt discriminated against because of her national origin.
16. I understand that Dr. Cho contends that Duke discriminated against her on the basis of her national origin (Korean). I did not and do not harbor any discriminatory animus toward Dr. Cho because of her national origin. I did not take action concerning Dr. Cho because I believed she had raised concerns about national origin discrimination. I am not aware of anyone making any derogatory comments or remarks regarding Dr. Cho's national origin.

DECLARATION PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.


Phyllis Kennel

Date: 4/10/19

ATTACHMENTS TO THE DECLARATION OF
PHYLLIS KENNEL

Phyllis Kennel

From: Alicia Holloway
Sent: Monday, June 27, 2016 8:56 AM
To: Phyllis Kennel
Subject: Re: Update

Hi Phyllis,

Thanks so much! And yes, I've made June aware though she's not particularly okay with it. Unfortunately, it's not as though I have a choice in the matter; both Becky and I have made contingency plans for if it happens and study-related tasks are completely covered and caught up. That's the most I can do at this point.

I will definitely let you know how I'm doing next week and appreciate the prayers as well as the well wishes. You be safe as well during your travels and have a fun, relaxing vacation...I'm living vicariously through all the vacationing people next week so I'm hoping everyone has a blast!

Best,
Alicia

Alicia Holloway, BA
MPH Candidate, Global Health
Duke University School of Nursing
311 Trent Drive #1006
Durham, NC 27710
Office: 919-684-3219
Cell: 336-269-7371
Email: alicia.holloway@duke.edu

From: Phyllis Kennel
Sent: Monday, June 27, 2016 8:46:34 AM
To: Alicia Holloway
Subject: Re: Update

Hi Alicia

It is great to hear from you. Yes of course please schedule that time and if you are able to work from home that is fine. I am assuming you have June know already. I will be on vacation next week but would like to hear how you are doing. Email or my cell is great. [REDACTED] Please take care and be thinking of you and have you in my prayers.

Thanks
Phyllis

Sent from my iPhone

On Jun 27, 2016, at 8:24 AM, Alicia Holloway <alicia.holloway@duke.edu> wrote:

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Good morning Phyllis,

Hope you're doing well! I just had my pre-care last week for surgery and the team may be tacking on a procedure that is a little more invasive than the original ones for that day. Because of this, I might need to add Tuesday, 7/5 and Wednesday 7/6 as potential days out next week. I'm not 100% sure, but they told me to make arrangements that include a little extra recovery time (just in case). I can go ahead and put those days on the calendar, but I just wanted to let you know. Or, if it's okay, I can even work remotely from home (got my laptop!) those days if they won't physically let me back before then. I will keep you posted or one of my family members if I am unable. They have all been provided with your contact info to update if necessary. Thanks!

Best,
Alicia

Alicia Holloway, BA
MPH Candidate, Global Health
Duke University School of Nursing
311 Trent Drive #1006
Durham, NC 27710
Office: 919-684-3219
Cell: 336-269-7371
Email: alicia.holloway@duke.edu

Phyllis Kennel

From: Marilyn Hockenberry, Ph.D.
Sent: Tuesday, July 12, 2016 11:03 AM
To: Phyllis Kennel
Subject: Re: Alicia Holloway - Phone call with June cho

Since this is not subject accrual what exactly does this person do that June would need a week coverage for. Is it some time of immediate need that would jeopardize her study? Let me know in a few bullets what she wanted done so I can tell the story well. Thanks

From: Phyllis Kennel <phyllis.kennel@duke.edu>
Date: Monday, July 11, 2016 4:06 PM
To: "marilyn.hockenberry@duke.edu" <marilyn.hockenberry@duke.edu>
Subject: FW: Alicia Holloway - Phone call with June cho

Hi Marilyn,
I wanted to let you know that I have a very challenging phone call with June (about 40 minutes) after I called her in response to the below email.

Basically, she wanted to know what I was going to do better about coverage because of the fact that Alicia had emergency surgery and her CRC was on planned vacation. There was a gap for one week without staff. She also wanted to know what I was going to do about the administrative "gaps" that there would be because Kim Fisher's group wasn't going to do it. I told her that I had meetings with both Becky and Alicia this week to find out what the gaps were and then we could figure out staffing. I have just come back from vacation today and need to meet with folks.

She indicated that it was my responsibility to take over my staff's work and that I should do better. (the better word was used multiple times)

I indicated to her that for such a short gap in time, it would be very difficult to get new coverage because of orientation and time to get someone started up. Also typically in these situations such as unplanned illness the PI at times would step in. She told me that she was too busy to do such things as going to the post office, collecting data etc.

She constantly interrupted me and even when I explained to her what we could do for coverage for unexpected situations she kept saying I had to come up with a plan. I tried to explain to her that it is very difficult to come up with a plan for unknown situations and that if something did happen, she would need to let me know what were the issues, what kind of coverage was needed and for how long. We can then look about "buying" time for someone to get them going but this usually is done in 2-4 weeks increments for the smallest timeframes. However, she didn't want to pay for anyone else.

She also wanted to know what type of surgery Alicia had to determine if she was going to be able to do her job. I informed her that her personal health information was private. The MD provided a two-week restriction letter which I provided her.

Last she kept complaining that she wasn't informed first about Alicia's going into the hospital. I tried to explain to her again, that Alicia let me know and I in turn (within 30 minutes) alerted June. Once again she told me I needed to do better. I then asked her what would she have done if she was informed first and how would she have done it better or handled coverage better. She never provided me a solution or idea and told me it was my responsibility.

I am only one person and I do not feel having further conversations with her alone is productive. She does not listen to what I tell her, she cuts me off and I feel it would be better to have a second person in the room for further discussions. My patience has been worn very thin with her and I also want to make sure I don't lose my cool, a 2nd person would help with that, ie mediate a little bit.

I am sorry to bring this to you, and please bear with the rambling writing....

I can rewrite if you need it to be more concise etc.

Thanks

Phyllis

WE ARE COMMITTED TO YOUR SUCCESS!

Phyllis Kennel, MS RD LDN
Director of Research Oversight and Compliance Core
Center for Nursing Research
Duke University School of Nursing
307 Trent Drive Room 4145
Durham, NC 27705
919-668-5244 (phone); 919-475-9423 (cell)

From: June Cho
Sent: Monday, July 11, 2016 10:42 AM
To: Phyllis Kennel
Subject: Alicia Holloway

Good morning Phyllis,

Would you fine the time to discuss about Alicia Holloway?

Thanks,
June